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Separating myth from reality

Rahul Khullar & Abhijit Das, Business Standard

13 Sep 2016: Trashing India's trade negotiating stance is a favourite sport amongst EJs (economists, journalists and/or a combination of the two). Unfortunately, many such analyses are inaccurate, not founded on facts, oblivious of political realities and, sometimes, plain wrong. (A recent instance: Swaminathan S Anklesaria Aiyar's "Use our head over heels", Economic Times August 18, 2016).

Many so-called experts are critical of the "stalling tactics" of India and others that have weakened the World Trade Organization (WTO) and forced Western powers (read the US) to go outside the WTO and negotiate mega trade pacts. Second, the mega trade pacts being negotiated outside the WTO, it is argued, will isolate India. Third, the relevant new issues today are IPR (intellectual property rights) protection, labour standards, environment etc., where India lags behind. Finally, India needs to change its stance at the WTO, if she has ambitions of sitting on the international high table. The "experts" could not be more wrong on each of these issues.

Did India's "stalling tactics" compel the Western powers to lose interest in the WTO? Completely wrong. Since 2008 it is the US that has systematically used every dirty trick possible to stall and block any progress on the Doha agenda. This is a fact that the "experts" conveniently omit to mention. The US did not want any progress on disciplining agriculture (or export) subsidies, nor did it want to cede ground on services for fear of jobs being Bangalored. On industrial tariffs (NAMA), it already had access because of unilateral tariff reduction by India and other developing countries. Given this reality, the US found it expedient to unshackle itself from the Doha Round. Instead, it has gone outside the WTO to pursue a political agenda vis-àvis China and to "create" an agenda of its own, minus agriculture subsidies.

India pressing for "sky-high tariffs" in agriculture is given as an illustration of her "stalling tactics". It is true that India sought to protect its interests in agriculture. This was a political mandate that had the support of both the government and the Opposition. Experts tend to forget that applied tariffs have been well below bound levels, i.e. applied levels on average are one-third of bound levels. Over the past decade, tariffs on major cereals (wheat, rice and pulses) were even reduced to zero. Hence, market access was available to trading partners.

The only protection against a surge of imports is a safeguard measure. Under the extant Agreement on Safeguards, it takes a long time to put a measure in place. This is why India sought a quicker way to react to an import surge of agricultural produce. For instance, if tariffs on apples were reduced and this resulted in a huge import surge, the lack of a quick (special) safeguard measure could send domestic prices crashing and wipe out apple growers and indirect employment. The experts do not think of this as a cause for worry. Fortunately, our politicians do, and we can ignore this reality only at our peril.

Experts posit that the Western powers have liberalised a lot and brought down tariffs on industrial products. True, but they overlook how developed countries flouted GATT (General Agreement on Tariffs and Trade) rules for almost half a century by restricting imports of textile products from developing countries. They have also done nothing to dismantle the egregious agriculture subsidies on cotton, soya, milk, sugar etc. Further, they have not lowered tariffs on leather and textiles. They have not even moved on their commitment to provide duty-free quotafree market access to LDCs (least developed countries) in a transparent manner. And lest we forget, they have abused health and technical standards (SPS and TBT measures) to block competitive exports from developing countries.

On “new” issues, experts totally ignore what is of vital interest to India: trade in services. Here, the main objective of the US and other developed countries is to somehow block entry of professionals and semi-skilled persons under Mode 4. Their sole objective is to protect domestic jobs and, more generally, to stop liberalisation for fear of an import surge. Witness the nationalist movements in these countries, say France, if there are any lingering doubts.

And, on IPRs, India is completely WTO-compliant. On changes to existing IPR disciplines there is simply no consensus. Similarly, on standards for labour or environment — two other important “new” issues — most of the world is still not on the same page as the US. So to expect that this will be a near-term problem is unfounded.

Will the new mega trade pacts isolate India? Surely not. Most developing countries including India, China, Brazil and South Africa are excluded from such deals. But it is these countries that account for the bulk of trade. In any case, the two mega free trade agreements — TransPacific Partnership and Transatlantic Trade and Investment Partnership — are not imminent. Many countries in the two mega trading blocks are worried about the domestic political and economic aftermath of these deals. They are not as enthused as the US. Even across the Atlantic there are serious differences on many issues, including IPRs. Thus, the concerns on such mega deals are misplaced. In any case, India has negotiated her own comprehensive economic partnership agreements and is moving forward on protecting her trade interests.

Finally, does India need to change its negotiating stance (and trade policy), if it has political ambitions of sitting on the international political high table? This seems wrong. International political respect derives from economic strength. Surely, India’s negotiating position has to be based on our national interests. There is little point in being on the high table if it entails a compromise with national economic interest.

In conclusion, Kissinger’s dictum that America has no permanent friends or enemies, only interests, rings true. India is a strategic partner of the US. But this has not prevented the US from pressing its economic interests in the WTO against India. To just keel over on trade issues to keep political peace is fraught with peril.

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India drags US to WTO over renewable energy subsidy to eight US states

Kirtika Suneja, The Economic Times

New Delhi, Sep 12, 2016: India has dragged the US to the World Trade Organisation (WTO) challenging the domestic content requirements and subsidies provided by eight US states in the renewable energy sector.

"On 9 September, India requested consultations with the US under the dispute settlement system regarding alleged domestic content requirements and subsidies provided by eight US states (Washington, California, Montana, Massachusetts, Connecticut, Michigan, Delaware and Minnesota) in the renewable energy sector," the WTO said in a release.

The request for consultations formally initiates a dispute in the WTO. Consultations give the parties an opportunity to discuss the matter and to find a satisfactory solution without proceeding further with litigation. After 60 days, if consultations have failed to resolve the dispute, the complainant may request adjudication by a panel.

With this move, the spat between India and the US on renewables has become bigger because in February this year, the WTO ruled in the US' favour and against India's domestic content requirements, saying that the measures New Delhi had taken were "not justified" under the Agreement on Trade-Related Investment Measures (TRIMs) and General Agreement on Tariffs and Trade (GATT).

As ET had reported in May, India seeing a contradiction in the US' stand at the WTO and its subsidy programmes, wanted to have consultations with the US outside the trade body to find a compromise.

In 2013, India has raised atleast 20 questions to the US in the WTO on the "provisions relating to local or domestic content requirements which raises issues of consistency" in its subsidy programmes.

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China's green car subsidy scandal spreads, 20 more car makers named

The Economic Times

BEIJING, Sep 09, 2016: China has accused more than 20 additional car makers, including Nissan and Hyundai , of breaking rules on green car subsidies, according to a state media report, widening a scandal over a $4.5 billion annual payout programme.

On Thursday, China's Ministry of Finance punished at least five car makers, accusing them of cheating its programme to subsidise electric and plug-in hybrid vehicles, receiving roughly 1 billion yuan ($150 million) in illegal subsidies.

"This is a major blow to the industry and also has a large impact on the country's policy enforcement," Xu Yanhua, a vice secretary for the China Association of Automobile Manufacturers told a news briefing.

The ministry said it would revoke the production licence of Suzhou Gemsea Coach Manufacturing, while the other four firms would be fined. The companies named included a subsidiary of Chery Holding, owner of the seventh most popular Chinese passenger car brand.

The scandal has cast a pall over China's drive to use subsidies to combat heavy pollution which affects large swathes of the country. This drive helped sales of electric and plug-in hybrids more than quadruple last year to 331,000 vehicles.

China's official Securities Daily newspaper reported on Friday that there was a list of an additional 20 companies who were also found to have committed violations.

These include Japan's Nissan, South Korea's Hyundai, Geely , Anhui Jianghuai Automobile (JAC Motor) and a subsidiary of BYD .

"As we understand the government investigation is proceeding, we cannot comment on this issue at this stage," a Hyundai spokeswoman said in a written statement.

Nissan did not respond to requests for comment. Geely declined to comment.

A BYD spokeswoman said the firm had not received any official notification from authorities. "Right now we do not have any idea where the suspected list is coming from."

A spokesman for JAC Motor, which this week announced it was exploring a potential joint venture focused on electric vehicles with German carmaker Volkswagen AG, said the firm did not have an immediate comment.

The subsidy cheating investigation is another blow to China achieving a full-year sales target of 700,000 electric and plug-in hybrid cars, said Yale Zhang, managing director of consultancy Automotive Foresight.

Only 245,000 such cars were sold in the first eight months of the year, according to China's automakers association.

China spent $4.5 billion last year in subsidies for such vehicles, although it is set to gradually phase out the payments by 2021.

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China’s BRICS trade pact idea finds no takers

Arun S, The Hindu

New Delhi, Sep 10, 2016: India and three others in the BRICS bloc — Brazil, Russia and South Africa — have cold-shouldered China's attempt to bring to the negotiating table a proposal for a Free Trade Agreement (FTA) between the five major emerging economies.

Tariff Elimination

While Beijing’s proposal for a 'BRICS FTA' is aimed at boosting trade ties in the grouping through binding commitments on eliminating tariffs, BRICS members barring China are not keen on such a pact.

Their apprehensions about the plan include the fear that it could lead to a surge in imports of Chinese goods into their territory — in turn, hurting local manufacturing.

The development comes amid hectic preparations for the BRICS Trade Ministers Meeting on October 13 and the first BRICS Trade Fair from October 12 to 14 (both in Delhi) as well as the Eighth BRICS Summit (to be held in Goa) on October 15-16. India is hosting these events as it currently holds the BRICS Chairmanship.

Official sources said though China had recently “informally sounded out other BRICS members regarding the need to take up the FTA proposal during the Trade Ministers Meeting, there were no takers for it.” There was also no interest to start negotiations on a separate ‘BRICS Investment (protection & promotion) Treaty’, they said.

‘Low ambition’

Discussions between the trade ministers will now be one with “low ambition” as none of the countries has shown willingness to take up anything “major” this time, the sources said. Therefore, there will only be a framework cooperation agreement on matters related to small and medium enterprises, services sector and Intellectual Property Rights (IPR). BRICS members will also consider evolving mechanisms for single window clearance as well as to speedily resolve non-tariff barriers that are hurting trade.

While Russia and South Africa did not respond to the BRICS FTA proposal, Brazil pointed out that it participates in FTA negotiations as part of the ‘Mercosur’ – a trading bloc and customs union of Latin American nations, the sources said.

Declining to take up the FTA proposal, Brazil also cited the recent political turmoil surrounding the regime change in that country, they said. India said it is already participating in negotiations on the Regional Comprehensive Economic Partnership (or RCEP, a proposed mega-regional FTA between the 16 Asia-Pacific nations including India and China).

Trade deficit

New Delhi also raised concerns regarding a widening goods trade deficit with China. India’s goods trade deficit with China has escalated from $1.1 billion in 2003-04 to $52.7 billion in 2015-16, according to Indian government statistics.

As per Chinese government statistics, in 2014, China enjoyed a goods trade surplus with India (to the tune of $37.9 billion) and with Russia (worth $12 billion), with Chinese exports outstripping imports into China from these countries.

However, the data showed that in 2014, China ran a goods trade deficit with South Africa (worth $28.9 billion) and with Brazil ($16.7 billion) with China importing more from these two countries than it exported to them.

‘BRICS visa’

The forthcoming BRICS Trade Ministers Meeting would look at a cooperation agreement for an exchange of services trade data, in addition to discussions on the proposed 'BRICS Visa' (or long-term multiple-entry visa for business persons to attend meetings and conferences, as well as for tourism and medical treatment purposes).

On IPR, there could be talks on exchange of regulations and an agreement to co-ordinate negotiating positions for IPR-related negotiations at the multilateral level. There will also be efforts to rope in the BRICS New Development Bank to finance projects mainly in the infrastructure sector in BRICS countries.

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African oil import funds may be put in vostro accounts to settle exporters' dues

Kirtika Suneja, The Economic Times

New Delhi, Sep 14, 2016: The government may soon extend to African countries a mechanism to clear payments of Indian exporters, especially pharmaceutical companies, stuck for months.

The payment model is similar to the one used in the case of Iran and now proposed for Venezuela.

The commerce department has moved a proposal but the final decision rests with the department of financial services and the Reserve Bank of India.

Essentially, the payment for oil imports from these countries will be used for paying for Indian exports. It will be a rupee mechanism wherein payment for imports from these countries will be made into a vostro account that will be then used to settle dues of domestic exporters.

Vostro account is a bank account held by a foreign bank with an Indian bank. Nigeria and Angola, the two top oil producing African countries, have been hit by a series of economic and political crises that have forced their governments to hold on to precious foreign exchange. These countries are not releasing dollars for payment to exporters.

The currency crisis is worsened by falling commodity prices, especially of oil. Nigeria is Africa's largest economy. "Many exporters are not able to do business because the payments are delayed," said PV Appaji, director general of Pharmexil. A least 15 complaints of delayed payments have been received, he said.

"For three to four African countries, including Nigeria & Angola, we have suggested a payment mechanism to resolve issue of pending payments for our exporters," a commerce department official said, requesting not to be identified.

The external affairs ministry is also said to be on board to resolve the current crisis through an Iran-like payment mechanism.

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'India's exports turning corner, pick up likely from Oct'

The Economic Times

New Delhi, Sep 13, 2016: India's exports are turning the corner and it would start showing healthy growth in the coming months on account of gradual strengthening of global demand and hardening commodity prices.

"We are turning the corner for sure. The rate of decline was slowing. Now margins (of decline) are narrowing. We will be able to maintain and slightly improve that and over the period of time, we will see the upward rise in exports," a senior official in the commerce ministry said.

The world demand is slowly picking up and the commodity prices are also hardening, the official said, adding "this will give a push to our exports".

However, manufacturing also has to pick to give a boost to export's growth.

Industrial production contracted 2.4 per cent in July registering the worst performance in eight months mainly on account of declining output in manufacturing and capital goods sectors.

Exporters body Federation of Indian Export Organisations (FIEO) said the country's outbound shipments will show growth modestly in 2016-17.

"This year, exports will reach at around USD 280 billion. Exports are expected to post better results from October," FIEO Director General Ajay Sahai said.

After rising for the first time since December 2014 in June, exports shrank again in July, contracting 6.84 per cent due to decline in shipments of engineering goods and petroleum products.

During April-July 2016-17, exports dipped to USD 87 billion as against USD 90.27 billion in the same period last year.

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Collapse of Hanjin puts Indian seafood exporters in a fix

PK Krishnakumar, The Economic Times

Kochi, Sep 10, 2016: The collapse of South Korean container shipper Hanjin has left many Indian seafood exporters worried over the fate of their cargo and how they will reach the shipments to customers.

Hanjin filed for bankruptcy a week ago, leaving the cargo carried by many of its ships stranded at ports around the world. Several marine products exporters who have begun shipping consignments for the Christmas-New Year shopping season are now struggling to retrieve the stuck cargo.

"My container of vannamei shrimps bound for Vietnam is stuck at Port Klang in Malaysia. I have to destuff the cargo and stuff it in a fresh container, all at my expense, to move it to the destination," said Norbert Karikkasserry, partner of Interseas seafood exporting company. "It is not certain whether the buyer will pay for it."

Some Indian seafood containers have been detained at Colombo port, according to exporters.

India exports Rs 30,000 crore worth marine products annually, with the US, South East Asia and Europe being the three largest buyers. The peak season for export is August to November.

The shipping sector is seeing some turbulence following the crisis faced by the world's seventh largest container shipping company. Freight rates have surged forcing exporters to pay more.

"Exporters are likely to face a container shortage as the containers in Hanjin vessels are not allowed to be unloaded unless the port dues are cleared," said Anwar Hashim, managing director of Abad Fisheries.

Even before Hanjin's collapse there were exporters who were not satisfied with its services. "As a responsible exporter, we are particular about working with shippers who meet the right delivery credentials without problems. Fortunately, we have not been stuck, as we stopped doing business with

Hanjin two years ago on account of quality issues," said Kamlesh Gupta, chairman of WestCoast Group, a leading exporter from Mumbai.

The crisis has hit seafood exports from India at a time when the sector is struggling with decline in catches and recessionary trends overseas. Southeast Asia, the second largest market for Indian seafood, has recovered from the diseases that hit the aquaculture farms, leading to lower purchase from India.

"The catches have dwindled, and on top of it, we are facing payment problems in the US. European countries like Spain have reduced their offtake," said Premachandra Bhat, MD of Mangla Marine Exim.

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Plan to boost exports to Islamic nations flounders

Arun S, The Hindu

New Delhi, Sep 13, 2016: India's move to boost its goods and services exports to over 50 Islamic nations mainly in Africa and Asia through a $100 million commercial Line of Credit (LoC), has failed to take off even five months after a pact to that effect.

There have been no disbursements under the financing mechanism -- though Export-Import Bank of India (Exim Bank) and the Islamic Corporation for the Development of the Private Sector (ICD) had signed a Memorandum of Understanding (MoU) for it in April this year. A worried Exim Bank has now urged ICD to raise awareness about the facility in the 52 Islamic nations that are ICD members. ICD is the private sector arm of Islamic Development Bank (IDB) Group.

No disbursements

Yaduvendra Mathur, Chairman & Managing Director, Exim Bank, told *The Hindu*: “The disbursements (under the LoC) have not started. We have told the ICD to push it (the financing mechanism).” Mathur said Exim Bank has also asked several exporters in India as well as Indian companies executing projects in various Islamic nations to inform the importers of their goods & services and sub-contractors operating in those countries to seek access to the commercial LoC.

According to the Indian government-owned Exim Bank, it extends commercial LoCs to recipients – who are overseas financial institutions, foreign governments, regional & national development banks, and commercial banks. These recipients – in this case, in the 52 Islamic nations – can then on lend to buyers for financing items that are imported from India including machinery, vehicles and equipment as well as related services. This loan is also helpful in cases where Indian firms win bids to execute projects in those countries. Credit periods for these LoCs are usually medium-to-long term and it carries London Interbank Offered Rate (LIBOR)-linked interest rates.

Once a contract gets the required approvals to be covered under the LoC mechanism, the Indian exporter/contractor can claim payment from Exim Bank against conforming documents & certificates regarding the export of goods & the services rendered. The (overseas) buyers of Indian goods & services repay the recipient financial institutions/bank/foreign governments (in this case, in the 52 Islamic nations). These recipients then make the repayment to Exim Bank. The ICD, under the LoC mechanism, will step in and make repayments to Exim Bank in case the recipient financial institutions/banks/governments in the 52 Islamic nations fail to make repayments on time. This ensures that the Exim Bank and Indian exporters are covered from risks.

The LoC has not taken off due to several reasons including lack of awareness, according to official sources who did not want to be identified. They said another reason is that though the MoU does not state that the LoC is only to promote trade between Muslims in India and in those Islamic nations, there is an apprehension that a section of officials in the financial institutions / banks / governments in the 52 Islamic nations and within the ICD are keen that the mechanism is used, among other things, to promote trade with Muslim suppliers in India. Export sector sources said most Indian exporters from the Muslim community are confined to segments such as meat, leather, ready-made garments, weaving, cashew and handicrafts. This particular LoC, however, is mainly for machinery, vehicles and equipment as well as related services, where it is difficult to find only Muslim suppliers, they said, adding that even otherwise there will be problems in linking a Muslim supplier in India to a Muslim buyer in those countries.

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India, EFTA talks on proposed FTA to resume this month

The Economic Times

New Delhi, Sep 09,2016: The long-stalled negotiations for a free trade agreement between India and the EFTA, a bloc of four European countries including Switzerland, are expected to resume this month.

However, the place of the meeting is yet to be decided but both the sides have agreed to resume the negotiations from end of this month, an official said.

In June, India and European Free Trade Association (EFTA) had agreed to resolve the outstanding issues for resumption of the negotiations for the proposed Trade and Economic Partnership Agreement (TEPA).

A meeting between the chief negotiators was held here to take stock of the ongoing negotiations.

Both sides have expressed willingness for early resumption of negotiations and concluding a balanced agreement in a time -bound manner, the official added.

The trade pact talks had started in October 2008. So far, 13 rounds of negotiations have been held at the level of chief negotiators. The four EFTA members are - Switzerland, Iceland, Norway and Liechtenstein.

The last round of negotiations was held in November 2013 and thereafter the negotiations have remained suspended.

The proposed pact covers trade in goods and services, market access for investments, protection of intellectual property and public procurement.

Negotiations were stuck on some issues related with intellectual property rights. EFTA wants India to commit more in IPR. They were also demanding for data exclusivity, which India is completely opposed to.

Data exclusivity provides protection to the technical data generated by innovator companies to prove the usefulness of their products.

In pharmaceutical sector, drug companies generate the data through expensive global clinical trials to prove the efficacy and safety of their new medicine. Switzerland has huge interest in this sector.

By gaining exclusive rights over this data, innovator companies can prevent their competitors from obtaining marketing licence for low-cost versions during the tenure of this exclusivity.

Two-way trade between India and EFTA stood at $ 24.5 billion in 2014-15 as against $22.1 billion in 2013-14.

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FTA negotiations with India complicated: Australia

The Economic Times

Melbourne, Sep 07,2016: Describing the ongoing Free Trade Agreement (FTA) negotiations with India as "complicated", Australian Trade Minister Steve Ciobo today indicated that the deal was now not a top priority for his government in the short term.

"On India, this is a complicated negotiation. Although the original aspiration was to knock it over in 12 months, that hasn't been possible," Ciobo told a TV channel here.

"We're now in the process of undertaking a stocktake about where negotiations are at," he said adding that "so I'll keep pursuing India, but that's not our key priority."

The minister said that the key priority in the short term for the Australian government was to sign a FTA deal with Indonesia and in this term was to focus on what Australia can do with Indonesia.

Ciobo's comments came two days after Prime Minister Narendra Modi held bilateral talks with his Australian counterpart Malcolm Turnbull on the sidelines of the G20 Summit in Hangzhou, China.

The talks for Comprehensive Economic Cooperation Agreement (CECA) or FTA between the two sides started in 2011 in a bid to boost bilateral trade and investment.

Both sides were expecting to conclude negotiations by December 2015, however, there were differences in areas like duty cut on dairy products and wines.

Several rounds of negotiations have been completed for liberalising trade and services regime, besides removing non-tariff barriers and encouraging investments.

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India inks agreement to expand trade with Chile

The Economic Times

New Delhi, Sep 06, 2016: India has signed an agreement with Chile to expand the India- Chile Preferential Trade Agreement (PTA), marking a 10-fold jump in the number of products to be traded on concessional duty rates.

"India's export basket with Chile is diversified and keeping in view the wide variety of tariff lines offered by Chile, the expanded PTA would immensely benefit India," said the commerce department in a release.

The Union Cabinet had approved the expansion of the PTA in April under which 86 per cent of India's exports to Chile will get concessions.

Under the expanded PTA, Chile has offered concessions to India on 1,798 tariff lines with duty cuts that are 30-100 per cent lower than the existing customs duty for various products. Similarly, India has offered concessions to Chile on 1,031 tariff lines with duties 10 per cent-100 per cent lower than the present import duties.

A PTA between India and Chile was signed in March 2006 and came into effect from August 2007.

In the original PTA, India's offer list to Chile consisted of 178 tariff lines and Chile's consisted of 296 tariff lines to be traded with duty concessions.

India's bilateral trade with Chile stood at $2.6 billion with exports at $0.68 billion and imports at $1.96 billion respectively in FY16. India's exports to Chile comprise transport equipment, pharmaceuticals, tyres and tubes, apparel, chemicals, textiles, readymade garments and leather products. Major items of import from Chile are copper ore and concentrates, iodine, copper anodes, copper cathodes and fertilisers.

Expanding LAC footprint

Expanding the PTA with Chile is a step towards tapping the Latin American and Caribbean Nations (LAC) market and the government is awaiting the report of the Joint Study Group on trade with Peru to take a call on the framework for a trade agreement.

"The expansion would be an important landmark in India-Chile relations and consolidate the traditional fraternal relations that have existed between India and LAC countries," the department said.

Similarly, India has begun the process of expanding its PTA with the Mercosur trade bloc in which the number of products on which tariff concessions would be given is likely to increase to more than 3,000 from 450 at present with more agricultural products getting covered. Mercosur consists of Argentina, Brazil, Paraguay and Uruguay. Venezuela, a Mercosur member, is not a party to the agreement.

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Foreign portfolio investors approach government to iron out Singapore Treaty, GAAR issues

Sachin Dave, The Economic Times

Mumbai, Sep 07, 2016: Foreign portfolio investors (FPIs) are lobbying the government to resolve problems related to the India-Singapore tax treaty and general anti-avoidance rules (GAAR), worried about their investment in equities.

FPIs fear after April 1, 2017, when both the renegotiated India-Singapore treaty and GAAR come into force, they will face challenges.

One relates to double taxation in India and their home country. The Asia Securities Industry & Financial Markets Association (ASIFMA), a Hong Kong-based grouping of FPIs and global banks, has written to the government and sought a meeting with the revenue secretary.

They say there is ambiguity on the tax treaty and lack of clarity on how FPIs would be taxed under GAAR. One of the suggestions they've made is radical — abolish capital gains tax and increase securities transaction tax (STT) to make up for that.

Apart from this, FPIs are of the view that capital gains exemption must be retained even under the renegotiated India-Singapore tax treaty as otherwise investing in India through Singapore "will not be cost effective."

The Indian government seems think otherwise, said people with knowledge of the matter. On the other hand, if exemption is retained, FPIs will still have the uncertainty concern of not knowing if it satisfies GAAR from April 1.

"Imposition of CGT (capital gains tax) will result in double taxation for many foreign investors," Patrick Pang, head of fixed income and compliance, ASIFMA, told ET.

"This is because when funds distribute the income to their investors, the investors are subject to tax in their home country. There is a misbelief that any CGT paid in India can be used as foreign tax credit in the investor's home country to offset their home country tax." AUS teachers' pension fund that invests in FPIs that in turn invest in India had faced a similar problem, said people with knowledge of this.

FPIs distribute gains from Indian stocks after paying capital gains tax in India to the teachers' fund, which itself does not pay US taxes. However, when the retired teachers receive payments from the pension fund, these are subject to US taxes and can't be offset against capital gains tax paid in India, said the persons cited above. Apart from the treaty issue, FPIs want answers on GAAR.

"Some issues that should be clarified include defining 'commercial substance' more objectively and providing clarity on extent of location of assets, people and functions to ensure treaty benefits are not denied," said Rajesh H Gandhi, partner, Deloitte Haskins & Sells.

"The government could also consider clarifying if expense threshold — as required under certain tax treaties such as India's treaties with Singapore and Mauritius — is met (commonly referred to as limitation of benefits clause), GAAR would not apply."

There is no clarity on how the government would define "substance" when FPI investments are routed via apooling vehicle in Singapore or any other destination. Many FPIs may be required to invest in infrastructure in Singapore and hire more people to manage funds that invest in India. FPIs say capital could shift to destinations that are more attractive.

That will mean greater returns need to be provided to investors to entice them to invest, resulting in higher cost of capital, said an expert. Indian companies could then opt for listing or raising funds outside

India. Also, the secondary market trading may shift to the Singapore Nifty and flight of capital out of the country could weaken the rupee, he said.

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